

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re:

PHILIP MARTIN KLEINSMITH,

Petitioner.

No. 07-4151

ORDER
Filed September 11, 2007

Before **KELLY, BRISCOE**, and **McCONNELL**, Circuit Judges.

Philip Kleinsmith is a Colorado resident admitted to the bar of the United States District Court for the District of Utah. He has filed a petition for a writ of prohibition barring enforcement of the district court's Local Rule 83-1.1(e), which requires non-Utah resident attorneys to associate with local counsel in every case.

This court invited the district court to respond to the issues presented by the petition. By letter, the Chief Judge of the district court informed this court that the district court's active judges had reviewed the local rule and determined that it should be eliminated. To that end, the Chief Judge has requested the local rules committee to begin the process of amending the rule. The Chief Judge also stated that, pending the proposed amendment, the Clerk's Office would not enforce the rule against Mr. Kleinsmith. In light of this response, this court

ordered further briefing regarding mootness. Mr. Kleinsmith argued that the rule is still in effect and capable of being enforced against him, and “[t]hat its existence may cease at some future date is pure speculation.” Resp. at 3.

“The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed.” *Unified Sch. Dist. No. 259 v. Disability Rights Center of Kan.*, 491 F.3d 1143, 1150 (10th Cir. 2007) (quotation omitted).

“The crucial question is whether granting a present determination of the issues offered will have some effect in the real world.” *Prier v. Steed*, 456 F.3d 1209, 1213 (10th Cir. 2004) (quotation and ellipses omitted).

We take the Chief Judge at her word that the district court has determined to eliminate Local Rule 83-1.1(e) and has begun the process to implement that decision. The elimination of the rule is the result Mr. Kleinsmith seeks in his mandamus action. Unless the district court fails to eliminate the rule as expected, further proceedings in this court would not have an effect in the real world.

The petition for a writ of mandamus is DISMISSED AS MOOT.

Mr. Kleinsmith’s request for sanctions is DENIED.

Judge McConnell dissents from the dismissal of the petition.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk